

**TCA Television Corp. v. McCollum,
No. 1:15-cv-04325-GBD (S.D.N.Y. Dec. 17, 2015)**

Year	2015
Court	United States District Court for the Southern District of New York
Key Facts	<p>Plaintiffs TCA Television Corp., Hi Neighbor, and Diana Abbott Colton, who are the heirs of Abbott and Costello, own the copyright in the infamous comedy routine <i>Who's On First?</i> Defendants, Kevin McCollum and additional producers of the critically-acclaimed Broadway dark comedy <i>Hand to God</i>, used one minute and seven seconds of dialogue from <i>Who's On First?</i> in a scene where the main character, Jason, tries to impress a girl by performing the routine with his hand sock-puppet. When Jason claims to have made up the routine, his sock-puppet calls him a liar and tells the girl that the sketch “is a ‘famous routine from the Fifties’”—creating a scene that sets the “starting point for the gradual exposure of the darker side of Jason’s personality.”</p> <p>Plaintiffs brought this copyright infringement claim against defendants for their unauthorized use of part of the comedy routine in <i>Hand to God</i>.</p>
Issue	Whether defendants’ unauthorized use of part of plaintiffs’ recorded comedy routine in a Broadway comedy qualifies as fair use.
Holding	<p>Under its four-factor analysis, the court found defendants’ use of a recognizable portion of the copyrighted comedy routine to be a fair use. The court held that the first factor, purpose and character of the use, weighed “strongly in favor” of defendants because the performance of the routine “result[ed] in comic relief for the audience . . . for reasons different from why audiences found the original sketch humorous.” Given the “new and different function” of the routine in the play, the court viewed the use as transformative. Next, the court held that the second statutory factor, the nature of the work, weighed in the plaintiffs’ favor because <i>Who's On First?</i> is “clearly creative” as opposed to factual. The court also found that the third factor, the amount of work used, tipped “slightly in favor” of plaintiffs because defendants used “what amount[ed] to ‘the heart’” of the original work given that “even only one line” of the routine was “instantly recognizable.” Lastly, the court found that the fourth statutory factor, the effect of the use on the potential market for the work, weighed in favor of defendants because it was “unlikely that . . . Jason and his puppet’s reenactment of the [r]outine could usurp the market for the original Abbott and Costello performance.” The court also noted that defendants’ “transformative use” of the routine could “broaden the market for the original” by “expos[ing] a new audience of viewers to the work.”</p>
Tags	Second Circuit; Film/Audiovisual
Outcome	Fair Use Found

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